

APPEAL NO. 021791
FILED SEPTEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 31, 2002, with the record closing on June 10, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the first quarter.

The hearing officer, in her Statement of Evidence, recited that neither the claimant nor the claimant's attorney had appeared at the scheduled CCH, that a 10-day show cause letter had been sent to the claimant and the claimant's attorney on May 31, 2002, that a request for continuance, sent by facsimile transmission (fax), had been received 45 minutes after the scheduled start time of the CCH, and that because the hearing had been adjourned no ruling was made on the request.

The hearing officer recites that the record was closed on June 10, 2002, and that no letter had been received from either the claimant or the claimant's attorney. In a letter dated June 11, 2002, apparently sent by fax on June 12, 2002, the claimant's attorney asserts that the request for continuance had been sent by fax on May 29 and again on May 31, 2002, after the claimant's attorney was advised the May 29, 2002, fax had not been received.

The hearing officer determined that the claimant had not timely responded to the (show cause) letter sent on May 31, 2002, that the claimant did not have good cause for failure to attend the CCH, and entered her decision and order on the disputed issue.

The claimant appealed, contending that he had contacted his attorney "the same day [he] got the letter" and his attorney had advised him that he "had everything under control" and that the claimant did not need to appear. The claimant alleges that he was only following his "attorney's advice and trusting him to do what needed to be done." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Neither the claimant nor the claimant's attorney appeared at the CCH and did not timely respond to the "10-day" show cause letter sent by the hearing officer. In his appeal the claimant acknowledges that he failed to respond to "the letter." The hearing officer's show cause letter indicates that the claimant was sent a copy of the letter at the claimant's correct address. Where a party fails to appear at a scheduled CCH, the Appeals Panel has held that regardless of good cause for the single failure to appear, that party may subsequently present his or her evidence at a hearing. Texas Workers' Compensation Commission Appeal No. 970121, decided March 4, 1997. However,

what we have here is a failure to appear at the scheduled CCH, followed by a letter to the claimant giving him an opportunity to respond within 10 days, and the subsequent failure to respond within the terms specified in the letter. Under these circumstances, we find no abuse of discretion in the entering of a final Decision and Order. Texas Workers' Compensation Commission Appeal No. 020517, decided April 17, 2002.

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge